

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PHILLIP CRAIG DEAN,	§	
	§	
Plaintiff,	§	
	§	
v.	§	No. 3:24-cv-2591-E (BT)
	§	
JOHN KREIDER, ET AL.	§	
	§	
Defendants.	§	

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pro se plaintiff Phillip Craig Dean filed this civil action alleging that defendants John and Shaun Kreider made false statements in a 2018 forcible detainer proceeding that resulted in the state court awarding possession of Dean's home to the defendants. ECF No. 3 at 1-2. He also suggests that the state judge (who is not a defendant), the defendants' lawyer, and his own lawyer conspired against him. ECF No. 3 at 4 (asserting that the judge and attorneys engaged in "foul play"). He complains that, following the order of eviction, the movers broke his family's personal items and threw a dresser on his wife's cat. ECF No. 3 at 4-5; ECF No. 6. He seeks an order from this Court directing that the false affidavits be "thrown out" and that perjury charges be filed against the defendants and their mother, who may have testified or offered evidence in the forcible detainer proceeding. ECF No. 3 at 2. For the reasons below, the Court should dismiss Dean's complaint without prejudice for lack of subject matter jurisdiction.

Legal Standards and Analysis

The court “is duty-bound to examine its subject-matter jurisdiction *sua sponte*.” *Burciaga v. Deutsche Bank Nat’l Tr. Co.*, 871 F.3d 380, 384 n.4 (5th Cir. 2017).

Federal courts are courts of limited jurisdiction; “[t]hey possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen v. Guardian Life Ins. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). Unless otherwise provided by statute, federal subject matter jurisdiction requires: 1) an action “arising under the Constitution, laws, or treaties of the United States,” see 28 U.S.C. § 1331; or 2) complete diversity of citizenship between adverse parties combined with an amount in controversy exceeding \$75,000, see 28 U.S.C. § 1332.

Regarding federal question jurisdiction, the most common cases “arising under” federal law “are those in which federal law creates the cause of action.” *Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804, 808 (1986). In rare situations, a case may arise under federal law “where the vindication of a right under state law necessarily turn[s] on some construction of federal law.” *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 9 (1983).

But even if there is a claim under the Constitution or federal statutes, the Supreme Court has stated that such suits should be dismissed for want of jurisdiction where the alleged claim “is wholly insubstantial or frivolous.” *Bell v.*

Hood, 327 U.S. 678, 682-83 (1946). The Fifth Circuit has found a claim is “wholly insubstantial and frivolous” under *Bell* when that “claim has no plausible foundation.” *Carmichael v. United Techs. Corp.*, 835 F.2d 109, 114 (5th Cir. 1988) (quoting *Williamson v. Tucker*, 645 F.2d 404, 416 (5th Cir. 1981)). “Moreover, a court may *sua sponte* dismiss a complaint for lack of subject matter jurisdiction when the complaint is ‘patently insubstantial, presenting no federal question suitable for decision.’” *Isom v. United States Dep’t of Homeland Sec.*, 2021 WL 2232052, at *1-2 (E.D. Tex. Apr. 28, 2021), *rec. accepted* 2021 WL 2224345 (E.D. Tex. June 2, 2021) (internal quotation marks omitted) (quoting *Vasaturo v. Peterka*, 203 F. Supp. 3d 42, 44 (D.D.C. 2016) (quoting, in turn, *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994))). This includes “bizarre conspiracy theories” and “complaints resting on truly fanciful allegations.” *Vasaturo*, 203 F. Supp. 3d at 44.

In cases invoking diversity jurisdiction, each plaintiff’s citizenship must be diverse from each defendant’s citizenship, and the amount in controversy must exceed \$75,000. *See* 28 U.S.C. § 1332(a), (b). “The basis for diversity jurisdiction must be ‘distinctly and affirmatively alleged.’” *Dos Santos v. Belmere Ltd. P’ship*, 516 F. App’x 401, 403 (5th Cir. 2013) (per curiam). “The failure to adequately allege the basis for diversity jurisdiction mandates dismissal.” *Id.* (quoting *Stafford v. Mobil Oil Corp.*, 945 F.2d 803, 805 (5th Cir. 1991)).

While pleadings by *pro se* plaintiffs are construed liberally, *see, e.g., Perez v. United States*, 312 F.3d 191, 194–95 (5th Cir. 2002); *Mass v. McDonald’s Corp.*, 2004 WL 2624255, at *2 (N.D. Tex. Nov. 12, 2004), the court “must presume that

a suit lies outside [its] limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum.” *Howery v. Allstate Ins.*, 243 F.3d 912, 916 (5th Cir. 2001) (citations omitted). And “even though a particular statute or rule need not necessarily be cited by name[,]” the party asserting jurisdiction must allege the jurisdictional basis “affirmatively and distinctly”; jurisdiction cannot be “established argumentatively or by mere inference.” *Ill. Cent. Gulf R.R. Co. v. Pargas, Inc.*, 706 F.2d 633, 636 (5th Cir. 1983) (citations omitted). “[C]ourts are not obligated to search out the identity of a party’s vaguely-pleaded claims.” *Mass*, 2004 WL 2624255, at *2. Ultimately, “[t]he plaintiff is the master of his own pleadings, and even a *pro se* litigant has the right to plead himself out of court, just as an attorney may do.” *Estrada v. Dominguez*, 2001 WL 506982, at *2 (N.D. Tex. May 14, 2001).

Federal courts need not—and should not—wait for a Rule 12(b)(1) motion to determine whether subject matter jurisdiction exists. On the contrary, “[i]f the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.” *Fed. R. Civ. P. 12(h)(3)*. The court “is duty-bound to examine its subject-matter jurisdiction *sua sponte*.” *Burciaga*, 871 F.3d at 384 n.4; *see also Ins. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (explaining that while under Rule 12(h) defenses for lack of personal jurisdiction are waived if untimely, even an appellate court may review subject matter jurisdiction *sua sponte*).

Even construing Dean’s pleadings liberally, he fails to show that federal law creates his cause of action or that he is asserting a state-law claim that raises a substantial question of federal law. Rather, he attempts to assert state-law tort claims against private individuals. To the extent that he seeks relief under a criminal perjury statute, criminal statutes seldom establish civil liability and therefore fail to establish subject matter jurisdiction. *See, e.g., Ennis Transp. Co. v. Richter*, 2009 WL 464979, at *1 (N.D. Tex. Feb. 24, 2009) (“It is well established that generally there is no private cause of action for the violation of a federal criminal statute, and thus no jurisdiction for federal courts to preside over a suit between private parties when the only federal law allegedly violated is criminal. In rare circumstances, however, where a criminal statute has a ‘statutory basis for inferring’ the existence of a civil action, violation of a criminal statute may give rise to a private cause of action.”) (citations omitted). In short, Dean pleads no facts from which the Court could reasonably infer a cause of action under federal law, or a state-law claim that could invoke federal question jurisdiction. Nor has Dean established diversity jurisdiction. He does not identify the citizenship of the parties (although all appear to reside in Texas) or allege facts satisfying the amount in controversy requirement. Thus, the Court should dismiss this case without prejudice for lack of subject matter jurisdiction.

Leave to Amend

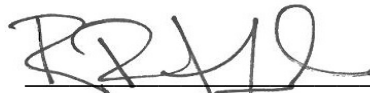
Ordinarily, “a *pro se* litigant should be afforded an opportunity to amend his complaint before it is dismissed.” *Brewster v. Dretke*, 587 F.3d 764, 767-68 (5th

[Cir. 2009](#)). Even so, the Court need not grant leave to amend “if the plaintiff has already pleaded his ‘best case.’” *Id.* at 768. As shown above, the facts as alleged by Dean show a lack of subject matter jurisdiction in this Court that does not appear to be curable by amendment. But the 14-day statutory objection period (explained below) will allow Dean the chance to proffer facts, if any, that can cure the jurisdictional deficiencies noted above.

Recommendation

The Court should DISMISS this lawsuit without prejudice for lack of subject matter jurisdiction.

SO RECOMMENDED October 18, 2024.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* [28 U.S.C. § 636\(b\)\(1\)](#); [FED. R. CIV. P. 72\(b\)](#). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge’s report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See* [Douglass v. United Servs. Auto. Ass’n](#), 79 F.3d 1415, 1417 (5th Cir. 1996).